

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY _____ D.C.
05 APR 18 PM 2:49

ROBERT R. DI TROLIO
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W. J. MINNER,
Plaintiff

v.

JO ANNE B. BARNHART,
Commissioner of Social Security

Defendant

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)
)
) Civil Action No. 04-2778
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)
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)
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ORDER OF REMAND

Pursuant to the power of this court to enter a judgment affirming, modifying, or reversing the Commissioner's decision with remand in Social Security actions under sentence four of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), it is therefore ordered that the Commissioner's Motion to Remand is **GRANTED**. Therefore, this case is remanded pursuant to sentence four of 42 U.S.C. § 405(g) to an administrative law judge ("ALJ") for a new hearing and decision. In issuing a new decision, the ALJ will do the following:

1) Properly evaluate Plaintiff's credibility. The ALJ concluded that Plaintiff was not fully credible without providing specific reasons or analysis for his conclusion.; and

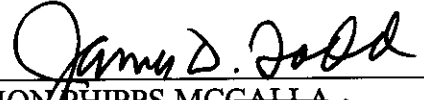
2. Reassess Plaintiff's mental residual functional capacity by using the proper technique as outlined in 20 C.F.R. §§ 404.1520a and 416.20a. The ALJ did not discuss the evidence that supported his conclusions regarding Plaintiff's limitations.

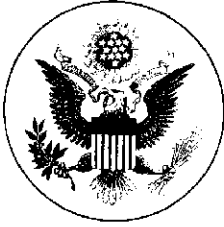
This document entered on the docket sheet in compliance
with Rule 58 and/or 79 (a) FRCP on 04-18-05

It is further ordered that Plaintiff's Motion to Remand for Consideration of New and Material Evidence, filed January 14, 2005 is **DENIED AS MOOT**, because upon remand, the ALJ will conduct a de novo hearing and Plaintiff will be given the opportunity to submit any additional evidence that was not before the ALJ previously.

Based on the foregoing, this Court hereby enters a judgment reversing the decision of the ALJ and remanding this case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). See Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157 (1991); Shalala v. Schaefer, 509 U.S. 292, 113 S.Ct. 2625 (1993). Upon remand, the Commissioner shall take action consistent with this order.

SO ORDERED this 18th day of April, 2005.


JON PHIPPS MCCALLA
UNITED STATES DISTRICT JUDGE



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Joe A. Dycus
U.S. ATTORNEY'S OFFICE
167 N. Main St.
Ste. 800
Memphis, TN 38103

Lester T. Wener
MCWHORTER & WENER
100 N. Main Street
Ste. 1234
Memphis, TN 38103

Honorable James Todd
US DISTRICT COURT